

**MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A
PERSON IN FEDERAL CUSTODY**

CASE NO. _____
(To be supplied by clerk)

3. Date of judgment of conviction:
June 2, 2015
4. Case number: 1:13-cr-00377
5. Length of sentence: 75 months
6. Nature of offense involved (all counts): Health care fraud in violation of 18 U.S.C. 1347
7. What was your plea? (check one)
- (A) Not guilty ☒
- (B) Guilty ☐
- (C) Nolo Contendere ☐
8. Kind of trial: (check one)
- (A) Jury ☒
- (B) Judge only ☐
9. Did you testify at the trial?
- Yes ☐ No ☒
10. Did you appeal from the judgment of conviction?
- Yes ☒ No ☐
11. If you did appeal, answer the following:
- (A) Name of court U.S. Court of Appeals for the Seventh Circuit
- (B) Result Affirmed
- (C) Date of result Judgment on April 15, 2016; Mandate on May 9, 2016
12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
- Yes ☐ No ☒

13. If your answer to (12) was **“YES,”** give the following information:

- (A) (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
- (5) Result _____
- (6) Date of result _____

(B) As to any second petition, application or motion, give the same information:

- (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
- (5) Result _____
- (6) Date of result _____

(C) As to any third petition, application or motion, give the same information:

- (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
- (5) Result _____
- (6) Date of result _____

(D) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(3) Third petition, etc. Yes ☐ No ☐

(E) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

14. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: IF YOU FAIL TO SET FORTH ALL GROUNDS IN THIS MOTION, YOU MAY BE BARRED FROM PRESENTING ADDITIONAL GROUNDS AT A LATER DATE.

A. Ground one Ineffective assistance of counsel during plea negotiations due to an actual conflict of interest that adversely affected my trial counsel's performance.

Supporting FACTS: (Tell your story briefly without citing cases or law.)

From the first time we discussed my case, I told my trial counsel that I wanted to plead guilty.

From then through the end of my trial, I repeatedly asked him to negotiate a plea agreement.

But my trial counsel had an actual conflict: He wanted my case to go to trial, knowing this was against my best interests, so he could get \$50,000 more for himself under his engagement letter. He sabotaged plea negotiations by concealing the government's plea offers from me and making unreasonable demands that he knew the government would reject. See my attorney's brief in support of this motion for details.

- B. Ground two Ineffective assistance of counsel during plea negotiations by failing to communicate the government's plea offers to me and to competently negotiate with the government for a better deal.

Supporting FACTS: (Tell your story briefly without citing cases or law.)

My trial counsel did not inform me of the terms of the government's first two written plea offers or even the existence of its third such offer. At the same time, he gave me unreasonable advice about what deal to expect, my chances of winning at trial, and the sentence I would get if I were found guilty, among other things. If I had competent counsel, I would have accepted as good a deal as good as my counsel would have negotiated. That would have been a level 25 with a downward departure from the low end of the same percentage I received at sentencing. See my attorney's brief in support of this motion for details.

- C. Ground three Ineffective assistance of counsel in plea negotiations and at sentencing due to failure to reasonably test the government's guidelines calculations.

Supporting FACTS: (Tell your story briefly without citing cases or law.)

My trial counsel failed to attempt to persuade the government to abandon a two-level enhancement under U.S.S.G. § 3B1.1(c), which the government did not even request for my sentencing and was deemed inappropriate. He and my sentencing counsel also failed to make reasonable efforts to show that the loss amount is less than \$2.5 million based on my personal knowledge of the rates that Medicare paid in the relevant locations and the fact that the scheme sought to prevent private insurers from receiving any claims. See my attorney's brief in support of this motion for details.

- D. Ground four Ineffective assistance of counsel for failing to oppose the government's request for me to be held jointly and severally liable, for forfeiture purposes, for property that I never obtained.

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

Supporting FACTS: (Tell your story briefly without citing cases or law.)

My sentencing counsel did not oppose the government's forfeiture request even though there
was a circuit split on the issue of joint and several liability. See my attorney's brief in support
of this motion for details.

15. If any of the grounds listed in 14 A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:
All of the grounds are ineffective assistance of counsel based on plea offers and arguments of which I
was not aware until earlier this year, long after my direct appeal was over. These grounds require
supplementing the record before the Court, which I could not do prior to filing a 2255 motion.
See my attorney's brief in support of this motion for details.

16. Do you have any petition or appeal now pending in any court as to the judgment under attack? Yes ☐ No ☒

(A) If **"YES,"** state the name of the court and the nature of the proceeding:

17. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

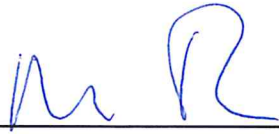
(A) At preliminary hearing Not applicable.

(B) At arraignment and plea Lorenzo Palomares-Starbuck, a/k/a Lorenzo Palomares,
2333 Brickell Ave. Suite A-1, Miami, FL 33129

- (C) At trial Lorenzo Palomares-Starbuck, a/k/a Lorenzo Palomares,
2333 Brickell Ave. Suite A-1, Miami, FL 33129
- (D) At sentencing Marcia Jean Silvers, 770 South Dixie Highway, Suite 113, Coral Gables,
FL 33146
- (E) On appeal Marcia Jean Silvers, 770 South Dixie Highway, Suite 113, Coral Gables,
FL 33146
- (F) In any post-conviction proceeding Not applicable.
- (G) On appeal from any adverse ruling in a post-conviction proceeding Not applicable.
18. Were you sentenced on more than one count of an indictment, or more than one indictment, in the same court and at approximately the same time? Yes ☒ No ☐
19. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒
- (A) If so, give the name and location of the court which imposed the sentence to be served in the future: _____
- (B) And give the date and length of sentence to be served in the future: _____

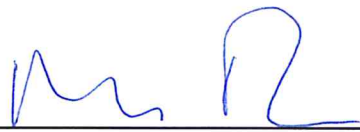
WHEREFORE, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

/s/ Joshua D. Greenberg
Signature of attorney (if any)


Signature of Movant

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/12/17
(date)


Signature of Movant